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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2005
WAC 02 282 51754

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Biochemistry and Molecular Biology from the Chinese Academy of Medical Sciences, Peking Union Medical College. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as

"exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

Along with documentation pertaining to his field of research, the petitioner submitted several letters of support.

[redacted] Professor, The Burnham Institute, states:

I have known [the petitioner] since February of 1998 when he joined my laboratory at the La Jolla Institute for Allergy and Immunology. . . . [The petitioner] moved with me to the Sidney Kimmel Cancer Center in 1999 and then to The Burnham Institute. He left my laboratory in June, 2000, to take up a research position at the University of California, San Diego.

During his years in my laboratory, [the petitioner] worked on several important projects, notably on the regulation and role of a protein tyrosine phosphatase called PTPH1, which he discovered to be a crucial suppressor of biochemical events associated with cell growth. He found that expression of PTPH1 inhibited T cell antigen-receptor induced tyrosine phosphorylation of several proteins and thereby suppressed the activation of the Erk and Jnk protein kinase cascades. PTPH1 also reduced the activation of growth-related genes and that its subcellular location at the cytoskeleton – plasma membrane interface was required for these effects. [The petitioner] discovered that the targeting of PTPH1 was mediated by the ERM domain located in the N-terminus of the protein. Finally, he found that the ERM domain of PTPH1 can interact with tropomyosin, a protein implicated in many different human cancers.

I am very impressed with [the petitioner's] accomplishments and his abilities as a scientist. He is intelligent and fully capable of designing and executing front line research in this very competitive field. He is the first and primary author on a paper describing the function of PTPH1 and published in the internationally prestigious journal *European Journal of Immunology,* volume 30, pages 1318-1325.

In conclusion, I feel that [the petitioner] has demonstrated an outstanding capability to perform independent and important research....

[redacted] Professor, The Burnham Institute, states:

In [the petitioner's] studies, his discovery, for the first time, revealed that the members of ERM-PTPases reduced the T cell antigen receptor-induced activation of reporter genes encompassing parts of the interleukin-2 gene promoter and driven by nuclear factor of activated T cells (NFAT) plus activator protein-1 (AP-1) . . . . These findings form the basis for the further studies in cell signaling research subjects, which address the role and regulation of the ERM-phosphatases in T cell activation. Needless to say, the negative regulatory function of these phosphatases may have important implications for the control of leukemia cell proliferation.

I am very impressed with [the petitioner's] abilities and achievements as a scientist. He holds both M.D. and Ph.D. degrees and is therefore highly qualified to conduct biomedical research in a clinically important field. With his medical background and expertise in molecular and cellular biology, he is ideally suited for designing and executing frontline research.

We note that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification

[redacted] Member and Head, Division of Cell Biology [redacted] Institute for Allergy and Immunology, states:

I became acquainted with [the petitioner] when he joined my Division in February 1998 as a postdoctoral research fellow in the laboratory of Dr. Tomas Mustelin, who at the time was an Associate Member at our Institute.

* * *

With his extensive knowledge in biochemistry and molecular biology, [the petitioner] made significant contributions to the study on protein tyrosine phosphatases in [redacted] laboratory. In his recent published papers, [the petitioner] found that ezrin-radixin and moesin-homology protein tyrosine phosphatases (ERM-PTPases) are localized at the cytoplasmic face of the plasma membrane and, therefore, likely involved in regulation of the membrane cytoskeleton and in signal transduction. In additional studies, he found that PTPH1, a member of ERM-PTPase family reduced the T cell antigen receptor-induced activation of reporter genes encompassing parts of the interleukin-2 gene promoter and driven by nuclear factor of activated T cells (NFAT) plus activator protein-1 (AP-1) . . . . By means

> of gene mutations, [the petitioner] found that both the catalytic activity and the ERM domain of PTPH1 are necessary for efficient inhibition of T cell receptor signaling . . . . These findings formed the basis for further studies, which address the role and regulation of the REM-protein tyrosine phosphotases (ERMPTP) in T cell activation.

We accept that the petitioner has contributed to the overall pool of knowledge in his field, but the record does not adequately distinguish the petitioner's work from that of other capable cancer researchers.

[redacted] Research Biologist, Department of Biology, University of California, San Diego, states:

> It was my great pleasure . . . to collaborate with [the petitioner] for part of the time that he spent as a postdoctoral research associate in [redacted] laboratory at U.C. San Diego. [The petitioner] agreed to undertake two collaborative projects with me. The first project he brought to a successful conclusion and in the second project he established the experimental procedure that will be used to complete the project. Both projects involve the characterization of RNA polymerase III . . . . One of the hallmarks of tumor cells (cancer) and certain viral infections is the de-regulation of transcription by RNA polymerase III. Our understanding of the RNA polymerase III transcription system is of great importance in the fight against cancer and other diseases as well as our basic understanding of how human cells work.
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> * * *
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> Within the past two years we found that TFIIIB has another function: it is also somehow involved in the separation of the two DNA strands which is necessary for RNA polymerase III to transcribe one of the strands into RNA . . . . [The petitioner's] project was to find out if one or more of the TFIIIB protein subunits could be found associated with the DNA at the precise location that becomes unwound in the presence of RNA polymerase III . . . . He introduced photoreactive, modified DNA bases into the DNA at different locations, which upon exposure to ultraviolet light would cross-link any protein that was near enough to the DNA. His research results are of high significance, attesting to a direct role of TFIIIB in DNA strand opening and a manuscript for publication is currently being written.
>
> The second collaboration involved developing a technique for controlling RNA synthesis by RNA polymerase III in a step-wise fashion . . . .[The petitioner] used his tagged RNA polymerase to develop a solid state system for transcription where elongation could be controlled by rapidly changing ribonucleotide mixtures that leave out one of the four nucleotides at each controlled step in elongation. This is in itself a significant technical achievement, but he also developed a technique that circumvents the ribonuclease activity associated with RNA polymerase III.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted three additional letters of support and further evidence of the petitioner's published work.

[redacted] Professor, Division of Biology, University of California, San Diego, states:

[The petitioner's] research on PTPH1 in T-lymphocyte activation has shed light on the possible interaction of other genes involved in cancer development. [The petitioner's] research results on T-lymphocyte activation have resulted in four publications and a manuscript in preparation. This record of publication demonstrates [the petitioner] to be a gifted investigator capable of a high level of productivity.

In 2000, [the petitioner] transferred his position to UCSD and worked with [redacted] on the biochemical analysis of transcription [redacted] is a member of the National Academy of Sciences and he is internationally renown for his work in the field of transcription. While working with [redacted] [the petitioner] applied a sophisticated method to show that two subunits of TFIIIB, a critical factor in the transcription of tRNA, are associated with the specific DNA sequences that are unwound by RNA polymerase III. This study demonstrates [the petitioner's] outstanding technical skills. [The petitioner] also developed an experimental strategy to control RNA polymerase II reaction in a stepwise fashion. This was previously impossible to achieve due to an intrinsic ribonuclease activity in RNA polymerase III that causes it to go backwards when stopped, chewing up the RNA in the process . . . . The previously unresolved questions on how RNA polymerase III can walk through barriers and how it terminates transcription at the correct site can now be answered. [The petitioner's] contribution to the study of tRNA transcription is therefore highly significant. These results will soon be published in the *Journal of Biological Chemistry*.

Unpublished results, unsupported by documentation showing that such results have attracted attention beyond the walls of the institutions where the petitioner has worked, are not adequate to demonstrate eligibility for the national interest waiver. In regard to the petitioner's published findings, the evidence presented is not adequate to show that his findings had achieved a significant level of recognition throughout his field as of the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). We acknowledge that the petitioner has co-written published articles with his mentor, [redacted] but the evidence presented is not adequate to show that these findings have had a significant national impact.

[redacted] Professor, The Burnham Institute, states:

[The petitioner's] research focuses on the mechanism of cancer generation and the signal regulation pathways of the cell growth by studying on the balance of activity between Protein Tyrosine kinases (PTKs) and Protein Tyrosine Phosphatases (PTPs), and the mechanism of signaling proteins gene transcription.

* * *

In his recent published papers, [the petitioner] found that ezrin-radixin and moesin-homology protein tyrosine phosphatases (ERM-PTPases) are located at the cytoplasmic face of the plasma membrane and therefore likely involved in regulation of the membrane cytoskeleton and signal transduction. By means of gene mutation, [the petitioner] found that both catalytic activity and its ERM domain are necessary to efficiently inhibit T cell receptor signaling. The catalytic inactive mutants PTPH1-CS and PTPMeg1-CS lacked effects on gene transcription of Erk2 MAP kinas and its upstream activator, Mek. The effect of PTPH1 was reduced by deletion of its N-terminal ERM domain.

[The petitioner] found, for the first time, that the important negative regulatory role of the cytoskeletal phosphotyrosine phosphatase PTPH1 and PTPMEG1 during T lymphocytes signaling. These findings form the basis for the further studies which address the role and regulation of the REM-protein tyrosine phosphatases (ERM-PTP) in T cell activation which is the central issue in cell growth, division, differentiation, and cancer research.

[The petitioner] developed a novel technique for controlling RNA synthesis by RNA polymerase III in a step-wise fashion. It allows scientists for the first time to understand how RNA polymerase III traverses through DNA-binding proteins during transcription, how RNA polymerase terminates transcription at the correct site, how RNA polymerase III releases from the DNA to transcribe another gene. It is noticeable that, so far, no laboratory has accomplished this research with RNA polymerase III in the United States.

[The petitioner] successfully finished protein-DNA complexes containing both TFIIIB and RNA polymerase III that he isolated from DNA complexes and then [the petitioner] found two subunits of TFIIIB are associated with the DNA sequence that become unwound in the presence of RNA polymerase III. [The petitioner's] research results are of high significance, discovering a direct role of TFIIIB in DNA strand opening during gene transcription and a recent paper has been accepted by the *Journal of Biological Chemistry*.

We do not find that publication of one's work is presumptive evidence of eligibility for the national interest waiver. Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research.

The petitioner's appellate submission includes citation indices for three published articles that he co-authored with [redacted] Excluding duplicate listings and self-citations by the petitioner and his co-authors, we note that the only article first-authored by the petitioner, entitled "Cytoskeletal protein tyrosine phosphatase PTPH1 reduces T cell antigen receptor signaling," was independently cited a mere three times. Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation cannot, however, demonstrate the response of independent researchers. In regard to the remaining two articles, as of November 20, 2003 (more than fourteen months after this petition was filed), the article entitled "Subcellular localization of intracellular protein tryrosine phosphatases in T cells" had fifteen independent cites and the article entitled "The next wave: Protein tyrosine phosphatases enter T cell antigen receptor signaling" had nine independent

cites. The limited number of citations to the petitioner's articles is not adequate to demonstrate that his work has had a significant national impact.[1]

Regarding the issue of co-authorship, the AAO has long acknowledged the collaborative nature of modern scientific research and therefore co-authorship should not diminish the petitioner's contribution to a given research project. That said, the fact that all three of the journal articles for which the petitioner provided citations were co-authored with his former mentor [redacted], a person of obvious international renown, cannot be entirely overlooked. In this case, it is apparent that the petitioner has repeatedly joined ongoing research projects conceived by others (such as [redacted]) rather than being the primary motivator or originator of his own projects. While an absence of cites to published materials authored by the petitioner independently of Dr. [redacted] does not diminish the petitioner's role in their joint collaborations, it certainly does not strengthen the petitioner's national interest waiver claim either. The limited citation history of the petitioner's work is not adequate to show that his publications have been especially important or particularly influential throughout the cancer research field.

[redacted] Professor of Cellular and Molecular Biology, [redacted] Cancer Center, also submitted a letter of support. [redacted] letter repeats the assertions contained in [redacted]'s letter. In fact, a significant portion of [redacted] letter is identical in content to the letter from [redacted]. For example, the third paragraph of [redacted]'s letter contains the exact same wording as the fourth and fifth paragraphs of [redacted]'s letter. We find it highly improbable that both of these individuals independently formulated the exact same wording.

While all of the preceding witnesses describe the importance of the petitioner's research, we must note that they are all from institutions where he has previously worked. This fact indicates that while the petitioner's work is valued by those with close professional ties, others outside his immediate circle are largely unaware of his research and do not attribute the same importance to his work. It is not sufficient for the petitioner and his witnesses to simply describe the work undertaken by the petitioner and then to state that it has had an impact. Instead, the petitioner must demonstrate that his individual contribution has had a disproportionately greater effect as compared with the efforts of other cancer researchers in the United States.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director noted that "[t]he bulk of the evidence consists mostly of statements from . . . current or former employers of the [petitioner]."

On appeal, counsel states: "The petitioner is absolutely working for the national interest of the United States." We concur. The intrinsic merit and national scope of cancer research are immediately apparent, regardless of the fact that all of the petitioner's witnesses are from research institutions located in Southern California. It has not been shown, however, that this particular researcher, to a greater extent than others performing similar research, qualifies for a special exemption from the job offer/labor certification requirement which, by law, normally attaches to the visa classification that he has chosen to seek.

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[1] We note that our analysis of the three citation indices presented on appeal included several citations that came into existence subsequent to the petition's filing date. *See Matter of Katigbak.*

Counsel further states: "The petitioner's article citation indicates the national and international impact of his research results." The citation history of the petitioner's work that was submitted on appeal has already been addressed. We cannot ignore that a large percentage of the citations presented on appeal were self-citations by the petitioner and his collaborators. While heavy independent citation of one's work would certainly demonstrate an unusual degree of influence on the field, the petitioner has not shown that his citation rate is so unusual that he stands out from his peers.

Counsel also argues that "the reference letters have persuasively established in both descriptive and evaluative ways that the [petitioner's] research is of inherently greater value than that of other research...currently underway at other institutions." As noted earlier, the petitioner's witnesses consist entirely of individuals from research institutions in Southern California where the petitioner was employed. These individuals became aware of the petitioner's work because of their close association with him; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are unusually significant. While the petitioner may have contributed to research projects undertaken in the laboratories of [redacted] his ability to significantly impact the field beyond these projects has not been adequately demonstrated. The petitioner's work has added to the overall body of knowledge in his field, but the evidence presented is not adequate to persuasively distinguish the petitioner from others in the cancer research field.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his witnesses, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on the national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given project or area of research, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.